



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,888	07/29/2002	Paul Eirich	WSP:205 US	4995
24041	7590	11/18/2004	EXAMINER	
SIMPSON & SIMPSON, PLLC 5555 MAIN STREET WILLIAMSVILLE, NY 14221-5406			COOLEY, CHARLES E	
			ART UNIT	PAPER NUMBER

1723

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/088,888	<b>Applicant(s)</b> EIRICH ET AL.	
	<b>Examiner</b> Charles E. Cooley	<b>Art Unit</b> 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 23-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-38 is/are allowed.
- 6) ☒ Claim(s) 39-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## FINAL OFFICE ACTION

### *Drawings*

1. The replacement sheets of drawings filed on 25 AUG 2004 have been approved by the examiner.

### *Specification*

2. The disclosure is objected to because of the following informalities:
  - a. Page 4, line 7: replace "Dewscription" with --Description--.
  - b. Paragraph [0029], line 6: replace "exit" with --be added to the mixer-- to clarify that the vapor is added to the mixer rather than exiting the mixer.
  - c. Paragraph [0030] should be revised to clarify that the side opening 17 allows removal of the mixed components as claimed in claim 39 (as is typical in the art).
  - d. Vacuum seal "16" (labeled in Fig. 2 and considered inherent to a vacuum mixer device) is not mentioned in the "Detailed Description of the Invention" section of the specification.
  - e. Container rotating motor "22" (shown in original and revised Fig. 1) is not mentioned in the "Detailed Description of the Invention" section of the specification.

Appropriate correction is required.

3. The substitute Abstract of the Disclosure is objected to because:
  - a. the inclusion of legal phraseology such as "means" in the abstract is improper - see line 8.
4. The title is acceptable.

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 C.F.R. § 1.75(d)(1) and M.P.E.P. § 608.01(I).

Correction of the following is required:

a. the mixing container 15 being rotated via container rotating motor 22 lacks antecedent basis in the substitute specification.

6. The amendment filed 25 AUG 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure (both the specification at paragraph [0015] and in the substitute abstract). 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

a. The original disclosure does not support the showing of the recited "valves for stopping the flows of hot water and vapour to the mixing chamber". The originally filed written specification is silent with respect to said valves. The only valves shown in original Fig. 1 are on the fresh water inlets 5, circulation water line 8, vapour out line 6, and in the vacuum unit 9. The hot vapour supply 12 to the mixing chamber does not show a valve. Since it is unclear from the specification if water line 8 is the source of hot water, it cannot be ascertained if the claimed hot water supply has the claimed valve or not. Note paragraph [0040] suggests that water lines 5 and 8 function as make-up moisture supply to the sand, not as hot water supplies (for heating purposes).

Paragraph [0041] suggests that the cooling tower water circulation circuit cools the vacuum unit 9 and the heat exchanger 11 which would appear to preclude water line 8 from providing hot water to mixer. The specification should thus be revised to clarify

what depicted element is the source of hot water to the mixer 1. If such element has a valve shown in original Fig. 1, the new matter objection to the valve on the hot water supply will be withdrawn. If such element does not have the valve, the new matter must be removed from the specification and abstract.

Note original claim 17 recites that the supply means 12 supplies the hot water or hot vapour and original claims 18-22 further recite where the addition of the hot water and hot vapor occurs. Accordingly, to clarify the issue, it is suggested all occurrences of "vapour" in paragraphs [0029] and [0030] be changed to --hot water or hot water vapour-- commensurate with paragraph [0020] and the originally filed claims 17-22. Nevertheless, it is not seen where support for the claimed valve on the supply means 12 exists.

***Claim Rejections - 35 U.S.C. § 112, first paragraph***

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as the specification, as originally filed, does not provide support for the invention as is now claimed.

The limitation in amended claim 39 regarding the "valves for stopping the flows of hot water and vapour to the mixing chamber" is considered new matter as noted in section 6(a) above.

8. Claims 39-44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention as explained above.

#### ***Allowable Subject Matter***

9. Claims 39-44 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. § 112.

10. Claims 23-38 are allowable over the prior art of record.

11. The following is an Examiner's statement of reasons for the indication of allowable subject matter:

The claims are allowed over the prior art of record for the reasons advanced by Applicant in the response filed 25 AUG 2004.

#### ***Response to Amendment***

12. Although applicant believes the amended claims comply with 35 U.S.C. § 112, the deficiencies enumerated above are considered valid for the reasons outlined.

Correction of such deficiencies by amendment, subject to the provisions of MPEP 714.12 and 714.13, would appear to place the claims in allowable form.

***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION. ANY RESPONSE FILED AFTER THE MAILING DATE OF THIS FINAL REJECTION WILL BE SUBJECT TO THE PROVISIONS OF MPEP 714.12 AND 714.13.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571)

272-1139. The examiner can normally be reached on Mon-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script, appearing to read "Charles", followed by a long, horizontal, wavy line that extends to the right.

Charles E. Cooley  
Primary Examiner  
Art Unit 1723

16 NOV 2004